

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**Case No. 17-cr-20740  
Hon. Gershwin A. Drain**

**(D-7) CARAUN KEY,**

**Defendant.**

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**OPINION AND ORDER DENYING DEFENDANT'S  
MOTION TO SUPPRESS EVIDENCE [#489]**

**I. INTRODUCTION**

Defendant Caraun Key has been charged in a Third Superseding Indictment with RICO conspiracy, 18 U.S.C. § 1962(d). The Third Superseding Indictment alleges that Defendant and his Co-Defendants are members of the Smokecamp street gang, which is involved in criminal activities, including the sale of narcotics.

Presently before the Court is Defendant's Motion to Suppress Evidence, filed on April 9, 2019. The Government filed a Response in Opposition on April 30, 2019. A hearing was held on May 20, 2019. For the reasons that follow, Defendant's Motion to Suppress Evidence is denied.

## **II. FACTUAL BACKGROUND**

The instant action stems from a multi-year investigation of the Smokecamp street gang. The Government alleges Smokecamp has been operating since at least 2007 and its main source of revenue is the sale of narcotics and firearms. The Smokecamp gang has taken control of the neighborhood near Seven Mile and Albion Roads on the east side of Detroit, which members refer to as “ABlock.” Smokecamp members sell narcotics from “trap” houses, the Plaga Apartment complex and businesses such as the East Seven Mile Liquor Store and the Sunoco gas station that are all located in the neighborhood. Smokecamp members use unifying marks, signs, colors, and social media to further their enterprise.

In 2015, Defendant, along with two of his Co-Defendants in this action, pleaded guilty in the United States District Court for the Northern District of West Virginia to aiding and abetting the possession of Oxycodone with the intent to distribute in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. Defendant was sentenced to thirty months imprisonment. He was released on or about June 29, 2016 to a halfway house in West Virginia and then relocated to a halfway house in Detroit on or about October 10, 2016.

On November 1, 2017, the grand jury initially indicted Defendant for RICO conspiracy. On November 3, 2017, a United States Magistrate Judge approved a search warrant for Defendant’s residence. Special Agent Mary Behler prepared a

94-page affidavit in support of her request for a search warrant. In her affidavit, Behler explained that Smokecamp has “a long history of violence” and that Smokecamp members “frequently possess firearms, including handguns and AK-47 style rifles.” They “show themselves brandishing these weapons in publicly available YouTube videos and social media photographs in order to promote the gang’s violent and intimidating image.”

Behler’s affidavit stated that on July 3, 2017, a federal search warrant was served on the Facebook pages belonging to Defendant. She explained that the results of the search revealed postings dating as far back as 2012 through 2017 which revealed Defendant’s involvement with Smokecamp, as well as a variety of crimes. For example, in September of 2016, Defendant posted the following on his Facebook account: “You getting money got a body then you one of us.” Co-Defendant Hakeem Bunnell responded “Yea luch let em knw my brother0\_,4ie,.” On August 5, 2016, Defendant posted, “I took dub [Hakeem Bunnell] and snoop [co-conspirator Tyree Williams] under my wing. Look how they turned out I raised gangstaz!!” On August 7, 2016, a Facebook user informed Defendant that he was going to get “paid bosses tatted on my face nexts week.” Defendant replied, “You better off getting Smokecamp bro.” The Facebook user stated, “Alright bet am just going get that n tell your brother chino.” Key responded, “I am the CEO of Smokecamp . . . .”

Behler also noted in her affidavit that she reviewed Defendant's Instagram page in September of 2017. On August 31, 2017, Defendant posted a photograph of a Smokecamp sweatshirt with a pistol, suspected marijuana and suspected codeine with the caption "[r]egular day for me." He also posted "Ganggang." On September 2, 2017, Defendant posted a photograph depicting suspected marijuana.

Behler's affidavit also noted that Defendant and two other Smokecamp members had transported and sold narcotics in West Virginia and that they were charged and convicted of a federal narcotics conspiracy in 2014.

Behler's affidavit indicated that she had contacted Defendant's probation officer and confirmed he lived at 14176 Carlisle Street in Detroit, Michigan. On October 5, 2017, agents observed Defendant exit the residence and retrieve something from a vehicle.

The affidavit sought a long list of items, including narcotics, firearms, electronic devices, documents showing financial transactions and photographs. The search of Defendant's residence resulted in the seizure of his cellular phone, several photographs and notes, as well as two firearms.

### **III. LAW & ANALYSIS**

#### **A. Probable Cause**

Defendant argues that Behler's warrant affidavit fails to establish probable cause to believe evidence of ongoing criminal activity would be located in the

Carlisle residence. The Government counters that Behler's affidavit established probable cause to believe there would be enterprise, gun and drug evidence in Defendant's home.

An affidavit supporting a search warrant must describe a "nexus between the place to be searched and the evidence sought." *United States v. Carpenter*, 360 F.3d 591, 594 (6th Cir. 2004). "The critical element is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific things to be searched for and seized are located on the property to which entry is sought." *United States v. Frazier*, 423 F.3d 526, 532 (6th Cir. 2005)(internal quotation marks omitted).

Courts must not engage in "line-by-line scrutiny." *United States v. Jackson*, 470 F.3d 299, 306 (6th Cir. 2006). The affidavit must be read "holistically . . . employing a healthy dose of common sense." *United States v. White*, 874 F.3d 490, 502 (6th Cir. 2017). "[R]eviewing courts are to accord the magistrate's determination great deference." *United States v. Allen*, 211 F.3d 970, 973 (6th Cir. 2000).

Defendant argues that the warrant affidavit fails to establish probable cause that he "distributed narcotics from the Carlisle residence, or that he used it to store narcotics or any other items related to the target offenses." Def.'s Br. at PgID

2406. Defendant asserts that Behler's affidavit contains no recent information to suggest any ongoing pattern of criminal activity. *Id.*

Contrary to Defendant's argument, the affidavit provided probable cause that evidence of the target offenses of "RICO conspiracy, distribution of controlled substances, illegal selling and possession of firearms, and conspiracy to do the same" would be located at the Carlisle residence. *See* Gov.'s Br., Ex. 1 at ¶ 124. Defendant attempts to suggest that the warrant affidavit was a drug affidavit, however this is a RICO action. Defendant's reliance on drug sales and drug case authority is misplaced.

For example, Defendant relies upon *United States v. Brown*, 828 F.3d 375 (6th Cir. 2016), however the *Brown* court was concerned with an affidavit solely seeking evidence of the defendant's purported heroin trafficking conspiracy. *Id.* at 380. The *Brown* court concluded that the magistrate judge was not entitled to infer that evidence of drug trafficking would be located at the defendant's home because he was a known drug dealer. *Id.* at 380-81.

Here, unlike the facts in *Brown*, the warrant sought not only evidence of drug trafficking, but also evidence of money, guns and gang affiliation. "[I]n cases involving a variety of suspected crimes . . . an issuing judge may infer that a criminal suspect keeps the instrumentalities and fruits of his crime in his residence." *United States v. Young*, 847 F.3d 328, 346 (6th Cir.), *cert. denied*, 137

S.Ct. 2200 (2017) (quoting *United States v. Williams*, 544 F.3d 683, 686 (6th Cir. 2008)).

In *Young*, the defendant argued that the district court erred by denying his motion to suppress evidence because the affidavit underlying the warrant provided no information that drug trafficking occurred at the defendant's residence. *Id.* at 345. In denying the defendant's appeal, the *Young* court concluded that it was reasonable for the "issuing judge to infer that a ranking member of a criminal enterprise kept money, guns, and drugs at his residence." *Id.* at 346. Additionally, the *Young* court relied on the fact that the conspiracy was ongoing, thus the place to be searched was a secure operational base. *Id.* at 347. Similarly, here it was reasonable for the Magistrate Judge to infer that the self-proclaimed CEO of Smokecamp, an ongoing criminal enterprise, would keep enterprise evidence at his home.

Defendant's RICO indictment, issued two days prior to Behler's affidavit, added to the probable cause determination. *See United States v. Johnson*, 726 F. App'x 393, 403 (6th Cir. 2018); *Libretti v. Woodson*, 600 F. App'x 367, 372 (6th Cir. 2015) ("A recent indictment may also factor into the probable cause determination.")

Defendant ignores his 2016 and 2017 social media postings, which show his continued involvement with the sale of drugs and promotion of the gang. Some of

these posts were within weeks of the search. For example, in August of 2017, Defendant posted a photograph of a Smokecamp sweatshirt with a pistol, suspected marijuana and suspected codeine with the caption “[r]egular day for me.” He also added “Ganggang” to this post. Additionally, in September of 2017, Defendant posted a photograph of himself with suspected marijuana. Defendant’s recent activity supports probable cause to believe that evidence of an ongoing criminal enterprise would be located at his residence.

### **B. Staleness**

Defendant also argues the information in the affidavit is stale. Courts are to look at four factors to determine whether information in an affidavit is stale: whether the (1) crime is transitory or continuing; (2) criminal is nomadic or stationary; (3) thing to be seized is perishable or durable; and (4) place to be searched is a forum of convenience or a secure operational base. *See United States v. Abboud*, 438 F.3d 554, 572-73 (6th Cir. 2006).

As to the first factor, the crime was ongoing. The alleged conspiracy began as early as 2007 and continued through the arrests of Defendant and his co-conspirators in November of 2017. Defendant’s 2016 and 2017 social media postings show that Defendant was still involved with the ongoing criminal enterprise and confirmed that his drug and gang activities were a “regular day for



me . . . .” “Evidence of ongoing criminal activity will generally defeat a claim of staleness.” *United States v. Greene*, 250 F.3d 471, 481 (6th Cir. 2001).

As to the second factor, Defendant and his Co-Defendants were firmly entrenched in the eastside “ABlock” neighborhood for at least a decade. An “issuing judge may infer that drug traffickers use their homes to store drugs and otherwise further their drug trafficking.” *United States v. Williams*, 544 F.3d 683, 687 (6th Cir. 2008) (collecting cases); *see also United States v. Burney*, 778 F.3d 536, 540-42 (6th Cir.), *cert. denied*, 135 S. Ct. 2877 (2015) (“the criminal under investigation . . . was firmly entrenched in the . . . metro area. By its very nature, his drug trafficking operation . . . was not the kind of nomadic or sporadic criminal enterprise likely to up-and-vanish under cover of darkness.”).

As to whether the items sought were perishable or durable, Defendant focuses his argument on “drug evidence,” but the affidavit also sought durable items: guns, ammunition, gang paraphernalia, media, documents, and photographs. This is enduring evidence. *See Burney*, 778 F.3d at 540-42 (warrant not stale because “evidence that a residence is being used as a stash house is unlikely to be consumed or to disappear, precisely because that evidence—scales, weapons, safes, bagging materials, and the like—is not readily consumable and is ‘of enduring utility to its holder.’”).

Lastly, the Carlisle residence was a secure operational base. *See United States v. Frechette*, 583 F.3d 374, 378 (6th Cir. 2009) (a defendant's residence "is clearly a 'secure operational base.'"). The affidavit established that Defendant had been residing at the Carlisle residence in the weeks leading up to the search.

Based on the foregoing considerations, the Court finds that the information in the affidavit was not stale because the conspiracy was ongoing, Defendant was not nomadic, the warrant sought durable as opposed to perishable items and the Carlisle residence was Defendant's secure operational base.

### **C. Good Faith Exception**

The Court further concludes that, even if the affidavit failed to provide probable cause, the agents acted in good faith. In cases in which the warrant is later found to be invalid, courts will not suppress evidence found as a result of that warrant where police conduct is pursued in good faith. *United States v. Leon*, 468 U.S. 897, 918-927 (1984). Suppression is warranted however when "the affidavit is so lacking in indicia of probable cause" that "belief in its existence [is] entirely unreasonable." *United States v. Carpenter*, 360 F.3d 591, 595 (6th Cir. 2004). In order for the good faith exception to apply, the affidavit must set forth "a minimally sufficient nexus between the illegal activity and the place to be searched." *Id.*

In *United States v. Fitzgerald*, 754 F. App'x 351, 356 (6th Cir. 2018), the Sixth Circuit concluded that an affidavit that “did not provide a sufficient nexus between the place to be searched and the items sought . . . was not a bare bones affidavit.” *Id.* In reaching this conclusion, the *Fitzgerald* court relied on the fact that the “affidavit thoroughly described a year-long investigation into a wide-ranging drug conspiracy . . . [and] the 62-page affidavit contains evidence of [the defendant]’s involvement in ongoing drug activity . . . of suspected co-conspirators.” *Id.*

Defendant mischaracterizes the affidavit at issue herein as a “bare bones affidavit.” The 94-page affidavit set forth the information gathered from a multi-year investigation and thoroughly described an ongoing criminal enterprise and the Defendant’s continued involvement with the enterprise’s activities. Similar to the circumstances in *Fitzgerald*, even if the affidavit at issue herein provided an insufficient nexus between the place to be searched and the items sought, the affidavit was not bare bones. The officers are therefore entitled to rely on the good faith exception because it was reasonable for them to believe there was probable cause to search the Carlisle residence for evidence of the ongoing RICO conspiracy.

#### IV. CONCLUSION

Accordingly, for the reasons articulated above, Defendant's Motion to Suppress Evidence [#489] is DENIED.

SO ORDERED.

Dated: May 21, 2019

/s/Gershwin A. Drain  
GERSHWIN A. DRAIN  
United States District Judge

#### CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on  
May 21, 2019, by electronic and/or ordinary mail.

/s/ Teresa McGovern  
Deputy Clerk